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Fall Caravan 2006!

Don't miss out on a great session with COOKIES AND DRINKS!

Instructor: Jerome Mayne

Course: "Fraud, Consequences & Ethics"

6 Hours of Required Continuing Education

Registration Fee: \$50.00 (including snacks during morning break)

Class begins at 9:00 a.m., ends at 4 p.m.

(Walk in registration begins at 8:15 a.m.)

For access assistance, handicapped persons may call the Commission office at (605) 773.3600

Spearfish – Holiday Inn – Tuesday, Sept. 26

Rapid City - Ramkota – Wednesday, Sept. 27

Pierre - Ramkota – Thursday, Sept. 28

Sioux Falls – Ramada – Monday, Oct. 2 (New Location!)

Sioux Falls - Ramada – Tuesday, Oct. 3 (New Location!)

Aberdeen - Ramkota – Wednesday, Oct. 4

Watertown – Ramkota – Thursday, Oct. 5

Pre-registration is required to guarantee admission. Failure to register may prohibit your attendance if the class is full. **The Commission will retain \$20 of any refunded registration fee.** Please complete and mail the registration form below along with a check for the registration fee to the S.D. Real Estate Commission at 221 West Capitol, Pierre SD 57501. Registration deadline is 5 days prior to each session.

Registrations will not be accepted over the phone or by fax.

S.D. REAL ESTATE COMMISSION Registration Form - Fall 2006 Educational Caravan

Name _____ License Number and Type _____

(Mailing Address) _____ (City) _____ (State) _____ (Zipcode) _____ (Phone) _____

Please check which you would like to attend. **CHECK ONLY ONE!**

- | | |
|--|---|
| <input type="checkbox"/> Spearfish – Sept. 26 th | <input type="checkbox"/> Sioux Falls – Oct. 2 nd - NEW LOCATION! |
| <input type="checkbox"/> Rapid City – Sept. 27 th | <input type="checkbox"/> Sioux Falls – Oct. 3 rd - NEW LOCATION! |
| <input type="checkbox"/> Pierre – Sept. 28 th | <input type="checkbox"/> Aberdeen – Oct. 4 th |
| | <input type="checkbox"/> Watertown – Oct. 5 th |

\$50 registration fee payable to SDREC must accompany this form. PLEASE -- one registrant per form. Credit Cards are NOT accepted!



A Letter from the Chairman

Time flies by so quickly these days... I feel I was just meeting Larry Lyngstad for the first time for my Commission orientation. At the end of our meeting, he handed me a briefcase that looked large enough for me to fit into. As I left I thought this large, black case was my initiation to the Real Estate Commission, that no one actually uses anything this size.

Several weeks later I arrived at our meeting, lugging my case up the stairs of the Public Safety building in Pierre, and entered a room about the size of a large walk-in closet. It was filled with tables that only allowed enough room for one person at a time to shimmy around. Once you got to your chair, you had to slide into it by placing your feet in first and going for a ride. I then surveyed the room and noticed everyone had an oversized briefcase next to them. Since I had not met the commissioners prior, I broke the ice by stating, "I didn't even know they made briefcases this size – I thought this was given to me to see if I would actually bring it to the meeting!" Everyone chuckled and responded back, "If the joke is on anybody, it is on us for carrying them for all these years." Anyway, you may have needed to be there to appreciate the humor.

Not knowing what to expect from a commission meeting, we started off in familiar territory... approve the minutes, approve the financials, and continue with the agenda. The first several minutes went by with these items and then it seemed we were on a break. I asked Loren Anderson, who was sitting next to me "Is this it for the day?" He chuckled and responded, "Unfortunately, it is only just beginning." Next thing I know our tiny room is being filled by an administrative law judge, a court reporter, and attorneys... there was a gavel, sworn testimony, evidence being allowed and disallowed, objections, over ruling, tempers flaring, people crying... I could go on and on. All I know is that I was thinking to myself, "What in the

world did I agree to?" (In my head the language may have been more colorful, but you get the idea).

Doesn't sound fun, does it? I do not remember off the top of my head why we had the hearing, or if the licensee was cleared, fined, license suspended, etc. But it does give some perspective to what a licensee may have to go through if a consumer, or another licensee, feels that they have been wronged.

This leads well into the topic that the speaker for the Fall Caravan will be presenting. Jerome Mayne was a mortgage lender prior to being an inmate in a federal penitentiary. He was sentenced because of his participation in mortgage fraud schemes, but more specifically money laundering, wire fraud, and other federal offenses. The moral of his story is consumers are not the only ones hurt by mortgage fraud... your family, your friends, your co-workers, and your reputation (along with the industry's), to name a few, are also unwanted benefactors. In addition, you have a life long title of "felon", have to admit to it on any job application, and you lose your right to vote.

See what he has to say during the Fall Caravan this September and October. I found the "Creative Fraud" article to be very interesting given my background in the banking industry, but it also relates to all parties involved in the mortgage process. You can see the caravan schedule in this newsletter as well as the SDREC website at www.state.sd.us/sdrec. You can also read a few articles Jerome has written by visiting www.maynefelon.com.

Until next issue,
Brian



From the Director's Desk

As summer comes to a close and with the advent of fall, please plan on attending the Commission's Fall Caravan. The course will deal with the timely

problem of mortgage fraud which has reached epic proportions throughout the United States. Other topics include RESPA issues and ethics. In this newsletter, you'll find an interesting ethics article written by the presenter, Jerome Mayne. The Commission is projecting this to be a popular seminar, so be sure to pre-register to guarantee a seat.

Brian Jackson has officially taken over the helm as the Commission's chairman with Eileen Fischer as vice-chair. Commissioner Jackson is a public member from Sioux Falls and Commissioner Fischer is an industry member from Pierre. The two will remain in their leadership positions through the 2007 fiscal year.

The Commission has reluctantly accepted the resignation of auditor/investigator, Tim Buseman, who has accepted an accounting position in the private sector. Tim proved to be a valued staff member and represented the Commission in a professional manner. The Commission and staff wish Tim well as he steps into the shoes of his new career.

It is currently permissible for a licensee to be associated with more than one broker. In most of these instances an agreement is reached between the responsible brokers regarding the liability issues of sharing an associate. Recently, however, there have been instances whereby one or none of the brokers realized that the associate had a license with another broker. Associates, before you hang an additional license with another broker, be sure your current broker is aware of your actions.

The Commission recently established a specialized real estate advisory group comprised of six brokers, two commission members, the Commission's legal counsel and me. This group will focus on commercial brokerage, real estate development, condominium projects and vacation properties.

It seems like summer sped by, but with the hot temperatures, the fall weather will be a welcome relief. School has started across the state, so please drive carefully through the school zones.

DjN



Ethics: Perspective of a Felon

By Jerome
Mayne

Does it come as a big surprise that a convicted felon—indeed, a white collar criminal—would have developed some thoughts about the topic of ethics? Probably not. Since my conviction I have had plenty of time to ponder the idea of ethics, and I've conducted some research on my own about the subject. In doing so, I've received tons of advice. I must say, I wish I'd had this information at the beginning of my career.

In 1999 I began serving a 21 month federal prison sentence for conspiracy to commit mail and wire fraud. The crime involved four real estate investors submitting fraudulent documentation in order to get approved for residential home loans. I was their loan officer. After the first few transactions, I knew in my heart that some of the documents I accepted were fakes. Over a nine month period I gradually started participating in the profits.

I have been told by some people that my crime was "fraud lite." Some have said that I was unlucky; wrong place at the wrong time. Well, there is no such thing as fraud lite, and luck has nothing to do with making the right decisions. I committed a crime. I am not proud of it and I'm certainly no hero for talking about it now.

However, there is an ethics lesson to be learned in all of this.

Dictionary.com defines ethics as "a set of principles of right conduct."

My understanding of being ethical was that you base your decision to do or not to do something on the feeling you get in your stomach. If that's the case, how do you teach "stomach feeling" to someone?

Perhaps this logic is what led me astray.

In a business' Code of Ethics, you can't possibly account for every situation. For every principle of correct conduct; for every "right" way to act in one situation, there is another, different situation that

follows, that may require yet a different "right" way to act.

I was traveling in my car with my boys, four and seven years old. In the rear-view mirror I saw the older one punch the younger one on the arm. The young one howled, "aahhhhhooooowww-auh!" I said, "Hey! Don't punch your brother." Immediately, the older one *slapped* his little brother in the arm. I said, "Don't *slap* your brother either." This was followed by a poke, which I followed with, "don't poke." A tickle – "Don't tickle." Then just a touch. Finally, I said, "keep your hands to yourself. Period!" The instigator was reduced to leveling a taunting glare at his younger sibling.

This could have gone on for hours. I finally gave them the ol', "Don't make me come back there!" (Which of course makes no sense since, I was driving.)

Doesn't this example prove that there are simply too many variable situations in the real world? Yes, but through my experiences, I have learned that ethics isn't about situations. It is about people and their behavior.

Ethics doesn't stand for "what to do." It stands for "how to behave." Finally understanding this made ethics less confusing for me. Not crystal clear, just less confusing.

Here are my theories.

For employers and leaders, it is imperative that you have a set of principles of right conduct. But to simply disseminate this information in printed format will not be enough. Ethics are best conveyed by example. Additionally, violations of ethical standards must be dealt with and not overlooked, or the unethical behavior will become business as usual.

If you are a member of an organization that adopts a code of ethics, read the printed words and follow the examples of the leadership. Pay attention to the feelings in your stomach. They may not tell you exactly what to do, but it may serve as a red flag. Remember, justifying questionable behavior is nothing more than being dishonest with yourself.

Lead your ethics model by example. Follow your ethics model with honesty.

Take my experiences and words for what they're worth, coming from a convicted felon. Strive to be honest, diligent, and consistent. Society, your

company, your family, and your children need you to stay out of prison.

Jerome Mayne is President and founder of Fraudcon, Inc., a fraud deterrent company. He is the author of the book titled, Life Saving Lessons – the diary of a white collar criminal. As a national keynote speaker and consultant, he has worked with dozens of finance trade associations and Fortune 500 companies to keep their people out of prison.

He encourages you to contact him at jmayne@fraudcon.com or visit www.fraudcon.com.

Mr. Mayne is the featured speaker for the 2006 Fall Caravan. Registration information can be found on page 1 of this newsletter.

Renewal Notice Reminder

License renewal forms will be mailed out in early October for licenses that expire at the end of 2006.

FHA Anti-Flipping Rules Go Into Effect

(Article courtesy of ALQ Real Estate Intelligence Report)

FHA's anti-flipping rules have gone into effect with the hope of curbing mortgage fraud and predatory lending abuse. Under the rules:

* A home sale that occurs within 90 days after its acquisition will not be eligible for a FHA-insured mortgage.

* Re-sales occurring between 91 and 180 days will be allowed, provided that the lender obtains an additional appraisal from an independent appraiser based on a re-sale percentage threshold established by FHA.

* Re-sales occurring between 90 days and one year will be subject to a requirement that the lender obtain additional documentation to support any dramatic increase in the property value.

Some investors complain the rules will hamper legitimate business deals, but no exemptions have been issued.

Federal Trade Commission Settles with Austin Board of REALTORS

(Article courtesy of ALQ Real Estate Intelligence Report)

In what some believe was at least heavy-handed, if not specifically misleading, the Federal Trade Commission announced settling a legal action against the Austin Board of Realtors, even though the ABoR policy in question was rescinded a year ago.

In a statement released by the government, the agency said it had charged the Board with “preventing consumers with real estate listing agreements for potentially lower-cost unbundled brokerage services from marketing their listings on important public Web sites” – ABoR-owned AustinHomeSearch.com and Realtor.com.

“ABoR’s Web site rules create significant roadblocks for real estate brokers to offer consumers alternatives to full-service brokerage agreements,” said Jeffrey Schmidt, director of the FTC’s Bureau of Competition. “By its law enforcement action, the Commission is not saying that one form of brokerage agreement is better than another. We are saying that the consumer should be able to decide.”

After the government’s statement was released, however, ABoR issued its own statement that essentially said it had been sandbagged by the Feds.

The Board complained that the FTC news release made it sound as if the rule was still in place, even though it had been rescinded a year ago.

The rule in question prevented homes under “exclusive agency listings” – about 3 percent of the market – from being posted on AustinHomeSearch.com.

But, said ABoR CEO David Foster, “As an association that supports members of all business models, we feel the approach outlined in the FTC ruling is correct. However, we also feel the FTC’s press release misrepresented the purpose of the ABoR rule.

“The rule was initially established to ensure that our consumer Web site was

used to promote listings to benefit members. We realized, however, that the rule was confusing and did not work as well as we’d intended, which was why it was rescinded so quickly. We are disappointed the FTC’s press release implies that we are guilty of wrongdoing – which the agreement expressly contradicts – and that the spirit of cooperation with which the FTC and ABoR negotiated the consent order did not translate to the FTC’s public statement.”

Continuing Education Corner

By Karen Callahan, Education Director

The Fall Caravan is fast approaching and now is a good opportunity to recap continuing education attendance requirements.

Arrive on time. In accordance with the License Law Book, a participant will not receive credit for a course if he or she is absent for more than 10 percent of the class. For a 6 hour class, this equals 36 minutes. This rule will be strictly enforced and there are no exceptions! Plan a few extra minutes for parking, finding the meeting room, etc. Return from breaks and lunch at the specified times as well. Also, partial credit for the course will not be given. If you cannot stay for the entire 6 hours, you should consider taking a course that fits better into your schedule.

Cell phones are to be turned off – not just on vibrate or silent mode. Each and every participant is just as busy as everyone else – leaving class to take or make phone calls is disruptive and disrespectful to others as well as the presenter. There is ample time for returning phone calls during the scheduled breaks.

Reading newspapers, magazines or books or surfing the web on a laptop or blackberry is not appropriate.

Do not carry on side conversations with the person next to you during the class. No matter how softly you think you are talking, it is distracting to the people around you. This is usually the biggest complaint we get on the caravan course evaluation forms.

The SDREC office works very hard to bring quality presenters to South Dakota to discuss important issues relevant to the real estate industry. We appreciate all those who attend the caravan and strive to make the course a valuable educational experience for all attendees. We hope to see all of you at the upcoming caravan with featured presenter, Jerome Mayne. His powerful and sobering personal message underscores the awesome responsibilities real estate professionals have to the public.

South Dakota Real Estate VIEW

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Karen Callahan,

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Michelle Metzinger, Auditor..... Pierre
Vacant, Auditor Sioux Falls

Articles by outside experts express the author's particular viewpoints. These opinions are not necessarily shared by the Commission, nor should they be mistaken for official policy. The articles are included because they may be of interest to the readers.

Disciplinary Action

The following disciplinary actions have become effective since the last report in the newsletter, excluding cases currently on appeal. A Stipulation and Assurance of Voluntary Compliance is a settlement agreement between licensees and the Real Estate Commission and constitutes neither an admission nor a denial of any violation.

Ronald A. Bradeen, Custer, Broker.

Findings of Fact, Conclusions of Law, and Order. Revocation of license. Said revocation is to be held in abeyance for two years upon successful completion of the following conditions: 1) Pay a penalty of \$2500 and costs of \$2845.00 2) Provide the Commission with access to his criminal history for the next two years. Should the licensee be arrested for any violation of the law which is alcohol related or any sort of crime which includes public urination, indecent exposure or is a violation of a sexual nature or involving nudity he agrees to the revocation of his license as originally ordered without benefit of further hearing. 3) Continue in counseling regarding his behavioral problems as recommended. 4) Should licensee fail to do any of the above, he agrees to the revocation of his license as originally ordered without benefit of further hearing. Violation of SDCL 36-21A-71 (6) and 36-21A-7.

Diane K. Byrd, Rapid City, Broker Associate. Findings of Fact, Conclusions of Law, and Order. Revocation of license; pay costs of \$4945.74. Ms. Byrd failed to disclose the revocation of her insurance agent's license. Violation of SDCL 36-21A-33 (7), 36-21A-71 (6).

Thomas L. Costello III, Newell, Broker. Findings of Fact, Conclusions of Law, and Order. Revocation of license; pay costs of \$4945.74. Violation of several sections of the SD Appraiser's Certification Board Law which resulted in forfeiture of license as a state registered appraiser. Violation of SDCL 36-21A-71(3), (15), (17) and (32).

Todd H. Lien, Sioux Falls, Broker Associate. Findings of Fact, Conclusions of Law, and Order. Revocation of license; pay penalty of \$2500 and costs of \$2858.52. Mr. Lien's actions constitute unprofessional conduct in several ways. Violation of SDCL 36-21A-71 (3) for

substantial and willful misrepresentations to the complainants regarding the status of a referral check. Violation of SDCL 36-21A-71(5) for failure to account for or remit within a reasonable amount of time moneys in his possession belonging to others and commingling funds of others with his own, including forging his name on the referral check and depositing it into his own account. Violation of SDCL 36-21A-71(15) for dishonesty and fraudulent conduct, including the forgery of a check. Violation of SDCL 36-21A-71(31) for failing to deal fairly with all of the parties to the transaction by forging a check and converting a referral check to his own use. Violation of SDCL 36-21A-71(32) for actions constituting bad faith, incompetence and fraudulent dealings in the forgery and conversion of the referral check.

Mel Dreyer, Rapid City, Broker Associate and Coldwell Banker, Lewis-Kirkeby-Hall Real Estate, Rapid City. Stipulation and Assurance of Voluntary Compliance. Ordered to show cause for advertising while under suspension. Suspension of license is extended to Sept. 1, 2006, which is approximately 60 days after the internet advertising was deleted. A letter of reprimand shall be issued to Coldwell Banker, Lewis-Kirkeby-Hall concerning the failure to insure that Dreyer's advertising was deleted from the Coldwell Banker Lewis-Kirkeby-Hall's website. Further, Coldwell Banker, Lewis-Kirkeby-Hall will develop an internet advertising policy and furnish the Commission with a copy of said policy within 30 days. Coldwell Banker, Lewis-Kirkeby-Hall to pay costs of \$1818.44. Alleged violation of SDCL 36-21A-71(1) & (35).

New Licensees

The South Dakota Real Estate Commission would like to welcome the following new licensees.

Broker

Bond, Richard K – Rapid City
Counts, Lonn E – Pray, MT
Duchscher, Diane – Dickinson, ND
Dukart, Shirley K – Dickinson, ND
Dulas, Michael B – Marshall, MN
Feist, Kathy J – Bismarck, ND
Flynn, Leo T – Sioux Falls

Fox, Yitzhok A – Omaha, NE
Hageman, Stephanie M – Akron, IA
Hoff, Doris E – Richardton, ND
Konenkamp, Matt – Rapid City
Mueller, Valisha M – Rapid City
Pogge, Erin M – Omaha, NE
Stuart, Richard – Durango, CO
Thomas, Gregory – New Ulm, MN
Thomas, James E – New Ulm, MN

Broker Associate

Atherley, Petra H – Black Hawk
Ban, Stacey L – St. Ignatius, MT
Barth, Angela J – Sioux Falls
Bingham, Linda R – Rapid City
Blote, Steve – Rapid City
Converse, Melissa L – Watertown
Davis, Amy K – Watertown
Elkin, Justin C – Spearfish
Emond, Tristan – Rapid City
Fjeldos, Justin D – Brookings
Fox, Jill – Watertown
Fremont, Dave L – Spearfish
Harris, Kendra J – Sioux Falls
Hill, Brent L – Buffalo Gap
Honkomp, Randall T – Brookings
Jackson, Kimberley A – Rapid City
Jamison, Harley – Volga
Jamison, Sharon – Volga
Konrad, Robert T – Tripp
Kosters, John P – Sioux Falls
Laframboise, Anthony – Watertown
Lanspa, Eric – Sioux Falls
Lockhart, Charles W – Sioux Falls
Lohre, Elizabeth A – Brandon
Mathiesen, Steven C – Sturgis
McLagan, Michael J – Sioux Falls
Mendel, Milton J – Freeman
Mentele, Wanda – Howard
Meyer, Benjamin A – Huron
Meyers, Mark – Brandon
Miller, Mark D – Rapid City
Mullaney, Dustin D – Volga
Nielsen, Lizbeth R – Spearfish
Olsen, Beth J – Sioux Falls
Ostrander, Don – Custer
Pederson, Carrie – Sioux Falls
Pendegraft, Jason A – Hermosa
Raposa, Richard F – Rapid City
Rutkowski, Donald J – Spearfish
Santana, John – Rapid City
Schaefer, Theresa – Madison
Serres, Stephanie J – Rapid City
Stone, Benjamin E – Sioux Falls
Stone, Valerie S – Sioux Falls
Styer, Ronald L – Wilmot
Swathanthirarajan, Hema – Sioux Falls
Thomas, Loretta – Belle Fourche

Vavruska, Larry D – Spearfish
Voorhees, Charles K – Onida
Wagenman, Kim H – Spearfish
Walker, Holly A – Tea
Wessel, Patricia J – Mitchell

Property Manager

Castor, Alicia (Lisa) – Rapid City

Reg. Home Inspector

Danowski, Ted J – Lead
Dykstra, Brandon J – Brandon
Hanson, Rolland – Centerville
Hieb, Jere D – Volga
Runquist, Elizabeth – Rapid City
VanDeRostyne, Joseph M – Aberdeen

Res. Rental Agent

Ackerman, Ana – Sturgis
Geraets, Ruth – Sioux Falls
Medici, Jessica A – Sioux Falls
Stolz, Jennifer – Sioux Falls

Salesperson

Dunnington, Joni-Kay – Sergeant Bluff, IA
Maizner, Joel – Bismarck, ND
Rafferty, Patrick E – Bowman, ND
Rogers, Carol A – Sioux City, IA
Sargent, Riley – Valentine, NE
Steidl, LeAnn – Bismarck, ND
Wedin, Melinda A – Alexandria, MN
Wortmann, Holly A – Crofton, NE

Time Share Agent

Abell, Michael – Lead
Downey, Marlene (Marci) – Rapid City
Kushman, John C – Rapid City
Livingston, Natalya T – Rapid City
Marotz, Ashley N – Rapid City
Rodriguez, Domico – Spearfish
Woodcock, Charles E – Rapid City



In Memoriam

The SD Real Estate Commission extends its sincerest sympathy to the families and friends of the following licensees who recently passed away:

Bill Conkling, Yankton
Virginia Dettman, Sioux Falls

Bill was the President of the SDAR; Virginia was the first woman licensed by the SDREC and an early advocate of real estate education.

Owners Sue Over Failure to Disclose Home Meth Lab

With permission of ARELLO

Plaintiffs in the state of Washington have filed suit claiming that numerous defendants, including a real estate brokerage and a property management company, failed to inform them that the home they purchased had been a methamphetamine lab. At issue in the case is whether the sellers and agents had knowledge of the activity and whether the property had been remediated and had not lost value or use.

(The following article courtesy of the Colorado Real Estate News, Spring 2006 Newsletter)

Advertising Your Team Identity

It has come to the Commission's attention that many broker associates are advertising team identities on business cards and other advertising venues in such a way as to potentially mislead the public as to the identity of the licensed brokerage.

This can give the false impression that the team identity is actually a licensed brokerage business. Employed brokers often advertise predominantly in the name of their personal corporations or as a team, with only a minor mention of the brokerage. In some cases, the brokerage name is not included in its entirety as required by law. It is therefore difficult for the public or Commission staff to identify the specific employing broker or brokerage firm.

The creation of teams is not prohibited and has, in fact, been informally recognized by the Commission. In their early stages, teams were usually identified by a member's name and the word "team," with the employing brokerage clearly identified in advertising media. Staff does not consider advertising in this manner to be misleading. However, more and more teams are creating individual corporations and LLCs, which are being advertised as team identities. This gives the impression that the brokerage firm employs another entity in violation of the License Law and Commission Rules. No team advertising should include the words

Realty, Real Estate, Company, Corporation, Corp., Inc., LLC, or other similar language that would indicate a company other than the employing brokerage firm.

The Commission allows an individual licensee to form a corporation, LLC, or other legal entity, usually on the advice of their attorney or other tax professional. This is allowable with the caveat that the entity name never appears in advertising, including but not limited to signage, business cards, letterhead, and contracts. It is acceptable for the wholly owned individual entity name to appear on a commission check issued from employing broker to associate broker. The same would apply to commission checks to incorporated teams. Similarly, the advertising of team names, while acceptable to the Commission, should never give the impression that the team is a licensed or separate entity.

Employed brokers are advised to refrain from any misleading advertising of team names and the omission of the entire brokerage name. Employing brokers are advised to monitor their licensees' creation of teams and their advertising practices to ensure that the public is not misled and that the identity of the brokerage is clearly and accurately represented.

Editor's Note: The SDREC is developing a task force to deal with issues pertaining to real estate teams.

USDA Inspection Form for Home Inspectors and Appraisers

Home Inspectors and Appraisers must use the USDA Rural Development Inspection Form when doing an Appraisal or Home Inspection that will be financed with a housing loan guaranteed by USDA-Rural Development under their Guaranteed Rural Housing Program.

For more information regarding this requirement, contact Kathy Chase, Single Family Housing Specialist, SD USDA-Rural Development at (605) 352-1133 or log onto their website at <http://www.rurdev.usda.gov/sd/>

There is also a link to the form on the SDREC website under the Home Inspection section.

APPRAISER UPDATE

This section of the South Dakota Real Estate Review is the responsibility of the South Dakota Department of Revenue and Regulation Appraiser Certification Program. Articles are printed here to communicate pertinent information to those appraisers who receive this newsletter and are licensed under the Certification Program. Appraiser certification inquiries can be directed to Sherry Bren, Program Administrator, 445 East Capitol, Pierre, SD 57501, 605-773-4608

Appraiser Certification Program Mission—Purpose— Intent

The Appraiser Certification Program was implemented July 1, 1990, pursuant to enactment of Title XI of the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA) by Congress. The mission of the Program is to certify, license and register appraisers to perform real estate appraisals in the state of South Dakota pursuant to Title XI (FIRREA). The purpose of the Program is to examine candidates, issue certificates, investigate and administer disciplinary actions to persons in violation of the rules, statutes and uniform standards, and approve qualifying and continuing education courses. Title XI intends that States supervise all of the activities and practices of persons who are certified or licensed to perform real estate appraisals through effective regulation, supervision and discipline to assure their professional competence.

Appraiser Certification Program Advisory Council

Council members provide recommendations to the Secretary of the Department of Revenue and Regulation in the areas of program administration in order to sustain a program that is consistent with Title XI. The Council meets quarterly in public forum. See the Website for meeting information. www.state.sd.us/appraisers

New Licensees – June/July

Robert M. Provart, State-Certified
General – Cody, WY

Monica M. Rilling, State-Registered
– Sioux Falls, SD
Michael D. Olson, State-Certified
General – Des Moines, IA
Royce L. Elker, State-Certified
General – Mankato, MN
Cheryl D. Thaler, State-Registered –
Wagner, SD

USPAP Q & A

Vol. 8, No. 6, June 2006

The 2006 edition of the Uniform Standards of Professional Appraisal Practice became effective on July 1, 2006. To assist with this transition, the Appraisal Standards Board created a document (available on the Appraisal Foundation website at www.appraisalfoundation.org) to answer some of the most common questions about the 2006 USPAP and Scope of Work. We have reprinted several of those questions and answers below.

2006 USPAP and Scope of Work

Question # 1: What are the major changes in the 2006 USPAP related to scope of work and departure concepts?

Question # 2: What is scope of work?

Question # 3: Will the changes in 2006 USPAP change the steps an appraiser takes in developing assignment results from what is done now?

Question # 4: Has any advice been issued to help understand the SCOPE OF WORK RULE and its use?

Question # 5: How does an appraiser know if the scope of work is adequate?

Question # 6: Who determines the scope of work?

Question # 7: Is a scope of work specified by the client acceptable?

Question # 8: What's important to know about "credible"?

Question # 9: Does the SCOPE OF WORK RULE introduce any new reporting requirements?

Question # 10: Is a separate section in the report needed for the scope of work description?

Question # 11: Does the report need to explain what wasn't done in an assignment?

Question # 12: Have the reporting labels been deleted from USPAP?

Answers to the above questions can be found at www.appraisalfoundation.org

**The SDREC Fall Caravan
is approved for 6 hours CE
credit for Appraisers! See
registration info on page 1
of this newsletter!**

EFFECTIVE 7/19/06 2006 Edition of the Uniform Standards of Professional Appraisal Practice Adopted

REVISIONS TO USPAP AND ADVISORY OPINIONS

The revisions in the 2006 Edition of USPAP are the result of two major Appraisal Standards Board (ASB) initiatives: (1) examination of the proper role of the scope of work and departure concepts in the appraisal process; and (2) specific review of STANDARDS 9 & 10. The ASB formally adopted the 2006 USPAP on Oct. 28, 2005 based on testimony presented at public meetings, responses to three Concept Papers, six Exposure Drafts, and extensive deliberation by the ASB over a two-year period. The effective date of the 2006 USPAP is 7/1/06.

KEY CHANGES IN USPAP AND ADVISORY OPINIONS

CONCEPTUAL CHANGE: USPAP now identifies a minimum set of standards that apply in all appraisal, appraisal review and appraisal consulting assignments. While this conceptual shift required significant revision to USPAP, these revisions did not

change the appraiser's obligations in the development process.

The importance of problem identification and the scope of work determination in the appraisal process are emphasized in the new SCOPE OF WORK RULE. The appropriate scope of work (type and extent of research and analyses) continues to be based on what is required to produce credible assignment results. The scope of work appropriate for a given assignment under the 2005 USPAP continues to be appropriate under the 2006 USPAP. The changes of 2006 do not permit a scope of work that was not appropriate under the 2005 USPAP. The requirement to report the scope of work takes on greater significance because intended users rely on this disclosure to understand the type and extent of research and analyses performed in the assignment, rather than relying on the simple (and potentially misleading) labels, Complete Appraisal and Limited Appraisal.

ITEMS REMOVED: The DEPARTURE RULE and associated defined terms (Complete Appraisal, Limited Appraisal, Binding Requirement, and Specific Requirement) were removed. Statement No. 7, Permitted Departure from Specific Requirements in Real Property and Personal Property Appraisal Assignments, and Advisory Opinion 15, Using the DEPARTURE RULE in Developing a Limited Appraisal, were retired. These actions were taken to resolve misunderstandings related to departure, enhance public trust in appraisal practice, and improve USPAP clarity.

The scope of work decision drives the full range of activities in the development process. In contrast, the DEPARTURE RULE only applied to portions of the development process governed by Specific Requirements. Having two overlapping processes caused confusion.

Further, departure addressed only a single dimension of appraisal development (the **application** of a specific requirement) while scope of work addresses both the **application** and **extent** of development. For example, development of an approach may have been excluded by invoking departure, but the scope of work analysis addresses both the decision to develop an approach and the determination of the appropriate technique and what constitutes appropriate and sufficient data and analyses to support the conclusion.

In communicating assignment results, the emphasis of the DEPARTURE RULE on the use of associated labels (Complete Appraisal and Limited Appraisal) was potentially misleading and may have been insufficient for intended users to make informed decisions.

The DEPARTURE RULE requirement for client agreement "that the performance of a limited appraisal service would be appropriate" has been removed. The SCOPE OF WORK RULE acknowledges that appraisers have broad flexibility and significant responsibility in determining the appropriate scope of work. Further, the Rule states that communication with the client is required to establish most of the information necessary for problem identification. Finally, the requirement to develop credible assignment results in the context of the intended use links the appropriate scope of work to the use or uses of the assignment results as identified by the client. Thus, the role of the client in shaping the full range of the appraiser's scope of work decision is recognized, but the need for client approval of the narrow band of items addressed by the DEPARTURE RULE has been removed.

Advisory Opinion 8, Market Value vs. Fair Value in Real Property Appraisals, was retired. Since this Advisory Opinion was created and revised, the Financial Accounting Standards Board (FASB) has issued additional Statements of Financial Accounting Standards that require use of the "fair value" type of value. Additionally, FASB has proposed clarification of its definition of fair value. For these reasons, the ASB retired AO-8 with the possibility of issuing a revision after FASB finalizes its Statement of Financial Accounting Standards addressing the definition of fair value.

DEFINITIONS: The definitions of Scope of Work and Appraiser's Peers were edited for clarity. The term Credible was defined because it is a central concept in USPAP.

PREAMBLE & ETHICS RULE: The PREAMBLE and the Record Keeping section of the ETHICS RULE were edited to reflect the removal of the DEPARTURE RULE and the addition of the SCOPE OF WORK RULE.

SCOPE OF WORK RULE: The SCOPE OF WORK RULE was added to emphasize the requirements for problem identification, determining the appropriate scope of work, and disclosure of the scope of

work that was performed in appraisal, appraisal review, and appraisal consulting assignments.

STANDARD 1 & STANDARD 2: References to the DEPARTURE RULE and associated terminology were removed, and the Standards were edited to establish consistency with the new SCOPE OF WORK RULE.

- The obligation to determine the scope of work required in an appraisal assignment was relocated to the end of Standards Rule (SR) 1-2 (resulting in renumbering subsections of SR 1-2). This places the scope of work determination in its proper sequence in the appraisal process.

- The portion of the Comment to SR 1-2(e) addressing assignment conditions that limit research opportunities was moved to the SCOPE OF WORK RULE.

- The language in 2005 USPAP SR 1-2(f) addressing the acceptability of the scope of work was moved to SCOPE OF WORK RULE.

- SR 1-4(g) was edited to clarify that opinions of value of portions of the overall subject property that are not real property are appraisals and must be performed by appraisers with the appropriate competence.

- The 2005 USPAP SR 1-4(h) was deleted and the requirement for the identification of relevant characteristics in the appraisal of proposed improvements was relocated to SR 1-2(e).

- In the reporting options of STANDARD 2, the requirement to disclose departure was removed, however the requirement to explain the exclusion of the sales comparison approach, cost approach, or income approach was retained in SR 2-2(a)(viii), (b)(viii) and (c)(viii).

STANDARD 3: References to the DEPARTURE RULE and associated terminology were removed, and the Standard was edited to establish consistency with the new SCOPE OF WORK RULE. The Standard was also edited to improve clarity.

[CHANGES IN STANDARDS 4, 5, 6, 7, 8, 9 AND 10 CAN BE FOUND IN THE 2006 EDITION OF USPAP]

STATEMENTS ON APPRAISAL STANDARDS and ADVISORY

OPINIONS: References to the DEPARTURE RULE and associated terminology were removed, and the Statements and Advisory Opinions were edited to establish consistency with the new SCOPE OF WORK RULE.

STATEMENT 9: SMT-9, Identification of the Intended Use and Intended Users, was revised because of the importance of both intended use and intended users in determining the appropriate scope of work for an assignment. References to the DEPARTURE RULE and associated terminology were removed, and the Statement was edited to establish consistency with the new SCOPE OF WORK RULE.

STATEMENT 10: SMT-10, Assignments for Use by a Federally Insured Depository Institution in a Federally Related Transaction, was edited to remove references to the DEPARTURE RULE and associated terminology, and establish consistency with the new SCOPE OF WORK RULE. The majority of the changes are in Section C (formerly titled "Departure Issues" and now re-titled "Scope of Work Issues") and Section E.1. Additionally, in response to comment from the federal financial institutions regulatory agencies (FDIC, FRB, OCC, OTS), the reference to residential tract development in Section E. 4 was removed.

ADVISORY OPINION 2: AO-2, Inspection of Subject Property, was expanded to apply to both real property and personal property and was revised to improve clarity and better illustrate the guidance.

ADVISORY OPINION 28: AO-28, Scope of Work Decision, Performance, and Disclosure, was added to illustrate the requirements of the SCOPE OF WORK RULE related to problem identification, determination of an appropriate scope of work, and disclosure of the scope of work that was performed. Specific illustrations clarify the application of these procedures.

ADVISORY OPINION 29: AO-29, An Acceptable Scope of Work, was added to offer advice regarding the measure of acceptability for the scope of work and to illustrate the application of the SCOPE OF WORK RULE in the performance of assignments.

NOTE: USPAP and the Advisory Opinions were edited for conformity with the adopted changes. Administrative edits were also made to improve consistency.

[The 2006 Edition of the Uniform Standards of Professional Appraisal Practice

is available from The Appraisal Foundation online at www.appraisalfoundation.org/store or call 800-348-2831.]

NOTICE

Retain a Copy of All Important Records

This is a notice to all licensees that the Department will systematically eliminate past continuing education records from licensee files in order to reduce file storage space. Appraisers are responsible for maintaining all records important to appraiser licensure, so make copies for your files of all records submitted to the Department.

Student Appraiser Guide

The Student Appraiser Guide has been developed by the Appraiser Qualifications Board of The Appraisal Foundation for student appraisers (those individuals who are new to the field) and for those who are changing from one real property appraiser credential to another. The guide will help to:

1. Better understand the requirements for becoming a credentialed appraiser;
2. Make you aware of how this regulatory system works;
3. Make you aware of the changes to minimum criteria that are effective in 2008;
4. Give you some tools to keep good records of your progress in meeting requirements; and
5. Provide additional resources to help answer your questions.

One of the many important items contained in the Student Appraiser Guide is the "Checklists". The Checklists provide an organized means of tracking your progress as you work toward an appraiser credential.

The requirements listed on the Checklists for the Trainee (State-Registered), Licensed Residential (State-Licensed), Certified Residential (State-Certified Residential), and Certified General (State-Certified General) classifications conform to the January 1, 1008 AQB Appraiser Qualification Criteria.

These Checklists are generic and may not meet all the requirements of an

individual state. Make sure your final list includes your state's requirements.

Another very important item contained in the Student Appraiser Guide is the "Qualifying Education Course Matrix". The matrix will help you record your progress in completing Qualifying Education requirements for each credential level. The Required Core Curriculum modules are shown in gray shading. Subtopics listed in boxes without shading are not mandatory for meeting the required core curriculum. The listed subtopics indicate the content coverage expected under each module.

The first modules listed are the 75 class hours required for the Trainee classification. These modules are also required as students advance to the Licensed Residential, Certified Residential and Certified General classifications. The total number of qualifying education hours required for each classification is listed at the end of each section.

The Revised Appraiser Qualification Criteria include the Qualifying Education requirements and the Required Core Curriculum for each classification. Complete details can be found at www.appraisalfoundation.org. (New candidates and candidates wishing to upgrade to a higher classification will be required to maintain the Qualifying Education Course Matrix and submit it as part of the process to meet the qualifications required effective January 1, 2008.)

The Student Appraiser Guide is available at The Appraisal Foundation Website: www.appraisalfoundation.org. If you have any questions, please feel free to contact Sherry Bren, Appraiser Certification Program, 445 E. Capitol Ave., Pierre, SD 57501; telephone : 605.773.4608; or by e-mail : sherry.bren@state.sd.us.)

Review of Cases – Jan. 1, - Aug. 14, 2006

For the period 1/1/06 – 8/14/06 the Department has received 13 upgrade applications and initiated 11 complaints.

Upgrades – 4 pending; 7 issued; and 2 agreed disposition

Complaints – 3 pending; 6 disciplinary actions; and 2 closed with no action.

Appraisal Regulations and the Interagency Statement on Independent Appraisal Evaluation Functions

The Office of the Comptroller of the Currency, The Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of Thrift Supervision and the National Credit Union Administration (the agencies) prepared this document in response to questions from federally regulated institutions (regulated institutions) on existing standards for selecting appraisers, ordering appraisals, accepting transferred appraisals, and other related topics. It should be reviewed in conjunction with the agencies' appraisal regulations, the "Interagency Appraisal and Evaluation Guidelines" (interagency guidelines), dated October 7, 1994, and the joint statement "Independent Appraisal and Evaluation

Functions" (independence statement), dated October 28, 2003.

[Continued from the June/July 2006 issue of *The Real Estate View*]

March 22, 2005

Evaluation and Other Appraisal Topics

24. Should a regulated institution comply with the independence requirements if an appraisal is not required by the agencies' appraisal regulations?

Answer: A regulated institution should ensure independence in the ordering process for an appraisal even if the appraisal was not required under the agencies' appraisal regulations. Regulated institutions should also maintain independence for evaluations.

25. Does a tax-assessment value from the local taxing authority constitute an evaluation? Can a loan officer who approves and/or recommends a loan conduct an evaluation if the market value that the officer develops in the evaluation does not exceed the tax-assessment value?

Answer: A value from the taxing authority alone is insufficient to be considered an evaluation. An evaluation report should include calculations,

supporting assumptions, and, if utilized, a discussion of comparable sales. If tax assessment information is used as part of an evaluation, the regulated institution should document the facts and analysis used to demonstrate that there is a valid correlation between the assessed values of the taxing authority and the property's market value. In addition, an evaluation should describe the real estate collateral, its condition, and its current and projected use.

A regulated institution should ensure that an individual who performs an evaluation is independent of the loan production function. Simply restricting the size of a transaction to less than the tax-assessed value alone does not comply with the agencies' appraisal regulations or the interagency guidelines, which address standards of independence. (See "Independence of the Appraisal and Evaluation Function" in the interagency guidelines.)

[FDIC FIL-20-2005: Frequently Asked Questions. See

<http://www.fdic.gov/news/news/financial/2005/fil2005a.html>]

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